



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL
CLEANUP

NOV 07 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

John Heckel
Contracts Manager
RE: Manson Construction Company
5209 East Marginal Way South
Seattle, Washington 98134

Richard L. Dolmseth
Registered Agent for Manson Construction Company
5209 East Marginal Way South
Seattle, Washington 98134

Re: Second General Notice of Potential Liability Pursuant to Section 107(a) for the Lower Duwamish Waterway Superfund Site, Seattle, Washington

Dear Representative of Manson Construction Company:

The U.S. Environmental Protection Agency has reviewed Manson Construction Company's responses to the 104(e) Information Request, which was sent in connection with the Lower Duwamish Waterway Superfund Site located in Seattle, Washington, and received on October 15, 2008 and November 14, 2011. Based on Manson Construction Company's responses and other available information, the EPA has determined that Manson Construction Company may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as the "Superfund" law, for the cleanup of the Site or the costs the EPA has incurred in cleanup of the Site. On July 17, 2008 EPA sent Manson Construction Company a General Notice Letter informing Manson Construction Company of its potential liability. The purpose of this Second General Notice Letter is to notify Manson Construction Company of the upcoming Proposed Remedial Action Plan, which is scheduled to be released soon. The public will have the opportunity to submit comments on the Proposed Remedial Action Plan during the public comment period.

EXPLANATION OF POTENTIAL LIABILITY

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), a Potentially Responsible Party or parties may be required to perform cleanup actions to protect the public health, welfare or the environment. The EPA has evaluated information in connection with its investigation of the Site and believes that Manson Construction Company may be a PRP with respect to this Superfund Site. PRPs under CERCLA include current and former owners or operators of the Site; as well as persons who arranged for treatment and/or disposal of any hazardous substances at the Site, and persons who accepted hazardous substances for transport and selected the Site to which the substances were delivered. Specifically, the EPA has reason to believe that hazardous substances have been or are being released from the facility(ies) located in Seattle, Washington, as identified in the 104(e) Information

Request response.

In accordance with CERCLA, the EPA and other parties have already undertaken certain actions and incurred costs in responding to the release of hazardous substances at the Site. Below is a brief description of some of these response actions:

- A Preliminary Assessment and Site Investigation was conducted to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site;
- A Remedial Investigation was completed to identify the Site characteristics and to define the nature and extent of soil, air, surface water and groundwater contamination at the Site and the risks posed by the Site;
- A Feasibility Study was conducted to evaluate different cleanup options for the Site; and
- The EPA has drafted and is preparing to release for public comment a Proposed Remedial Action Plan that will address how the Site will be cleaned up.

RESOURCES AND INFORMATION FOR SMALL BUSINESSES

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerops/bf/sblbra.htm> and review EPA guidance regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup>.

The EPA has created a number of helpful resources to assist small businesses and has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov. In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo. Finally, the EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act, which is enclosed with this letter.

If you have questions concerning this letter or the Superfund Site, please contact Aaron Lambert at (206) 553-5122. Any communication by any attorney on your behalf should be directed to Alexander Fidis, EPA Office of Regional Counsel, at (206) 553-4710.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Blocker", with a long horizontal flourish extending to the right.

Shawn Blocker, Unit Manager
Site Cleanup Unit #3
Office of Environmental Cleanup

Enclosures: SBREFA Fact Sheet
PRP Frequently Asked Questions
Explanation of the PRP Process

cc: Dan Cargill, Ecology/NWRO



FACT SHEET

**WHAT SMALL ENTITIES
SHOULD KNOW ABOUT
REGULATORY FLEXIBILITY
ACT AND THE SMALL
BUSINESS REGULATORY
ENFORCEMENT FAIRNESS
ACT**

Why should I be interested in RFA/SBREFA?

EPA has an ongoing commitment to minimize the burden of our regulations on small entities to the extent we can while still meeting our statutory requirements. The Regulatory Flexibility Act (RFA), as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA), provides small entities with an expanded opportunity to participate in the development of certain regulations.

What is SBREFA?

SBREFA was signed into law on March 29, 1996, and contains five distinct sections:

- **Subtitle A—Regulatory Compliance Simplification:** Among other things, requires the agency to publish Small Entity Compliance Guides that are written in plain language and explain the actions a small entity must take to comply with a rule or group of rules.
- **Subtitle B—Regulatory Enforcement Reforms:** Requires agencies to support the rights of small entities in enforcement actions, specifically providing for the reduction, and in certain cases, the waiver of civil penalties for violations by small entities.
- **Subtitle C—Equal Access to Justice:** Provides small businesses with expanded authority to go to court to be awarded attorneys' fees and costs when an agency has been found to be excessive in enforcement of federal regulations.
- **Subtitle D—Regulatory Flexibility Act Amendments:** Provides small entities with expanded opportunities to participate in the development of certain regulations.
- **Subtitle E—Congressional Review of Agency Rulemaking:** Agencies generally must provide Congress and the General Accounting Office with copies of all final rules and supporting analyses. Congress may decide not to allow a rule to take effect.

How does SBREFA affect EPA rulemaking?

SBREFA established certain formal procedural and analytical requirements (outlined below) for rules with the potential to impose a significant economic impact on a substantial number of small entities. But EPA also considers the concerns of small entities in the more frequent cases where impacts on small entities are more modest, even though SBREFA doesn't require it.

What does RFA/SBREFA require for proposed rules?

Initial Regulatory Flexibility Analysis. Generally, the RFA requires EPA to prepare an Initial Regulatory Flexibility Analysis (IRFA) for each proposed rule unless the rule will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the type and number of small entities potentially subject to the rule, recordkeeping and compliance requirements, and significant regulatory alternatives, among other things.

What does RFA/ SBREFA require for final rules?

Small Business Advocacy Review Panel. When an IRFA is required, EPA must also convene a Small Business Advocacy Review Panel before proposing a rule. EPA's Small Business Advocacy Chair convenes each Panel, which includes representatives from the Small Business Administration, the Office of Management and Budget, and EPA. A Panel conducts its own outreach to Small Entity Representatives likely to be subject to the rule and prepares a report to the Administrator of EPA on ways to reduce the potential impact of the rule on small entities. Each Panel's report becomes part of the rulemaking record for the proposed rule.

Final Regulatory Flexibility Analysis. When EPA issues a rule that may have a significant economic impact on a substantial number of small entities, we must prepare a Final Regulatory Flexibility Analysis (FRFA). The elements of a FRFA are similar to those of an IRFA, outlined above. In addition, each FRFA must summarize the significant issues raised by public comments on the IRFA, assess these issues, and describe any changes made in response to the comments.

Small Entity Compliance Guide. When a FRFA is required, EPA must also publish Small Entity Compliance Guides that are written in plain language and explain the actions a small entity must take to comply with a rule or group of rules.

What is the progress to date?

- EPA has completed 30 SBAR Panels in cooperation with SBA and OMB. In each case, the Panel recommended changes to the rule that would reduce impacts on small entities.
- EPA maintains a website dedicated to RFA/SBREFA issues: www.epa.gov/sbreffa. The primary purpose of the site is to provide public access to information and documents produced for, or directly related to, the Agency's implementation of SBREFA.
- Small Entity Compliance Guides are available on the RFA/SBREFA website.
- In March 1998, EPA delivered to Congress reports on SBREFA Section 223 - Penalty Reduction Program for Small Entities and SBREFA Section 213 - Informal Guidance Program. These reports are also available from the SBAC staff or from the RFA/SBREFA website.
- To date, EPA has submitted approximately 5,400 documents to Congress under the Congressional Review Act.

Where can I get more information?

Several EPA documents are available that can provide more information on the RFA/SBREFA, the Agency's small entity compliance assistance efforts and the elements of a regulatory flexibility analysis. These documents and further assistance with any RFA/SBREFA questions are available from the SBAC, SBAC Staff, or from the RFA/SBREFA website, listed below.

Small Business Advocacy Chair

Alexander Cristofaro

Small Business Advocacy Chair Staff

Joan B. Rogers, Team Leader

(202) 564-6568; rogers.joanb@epa.gov

Lakeshia Walker

(202) 564-6571; walker.lakeshia@epa.gov

Caryn Muellerleile

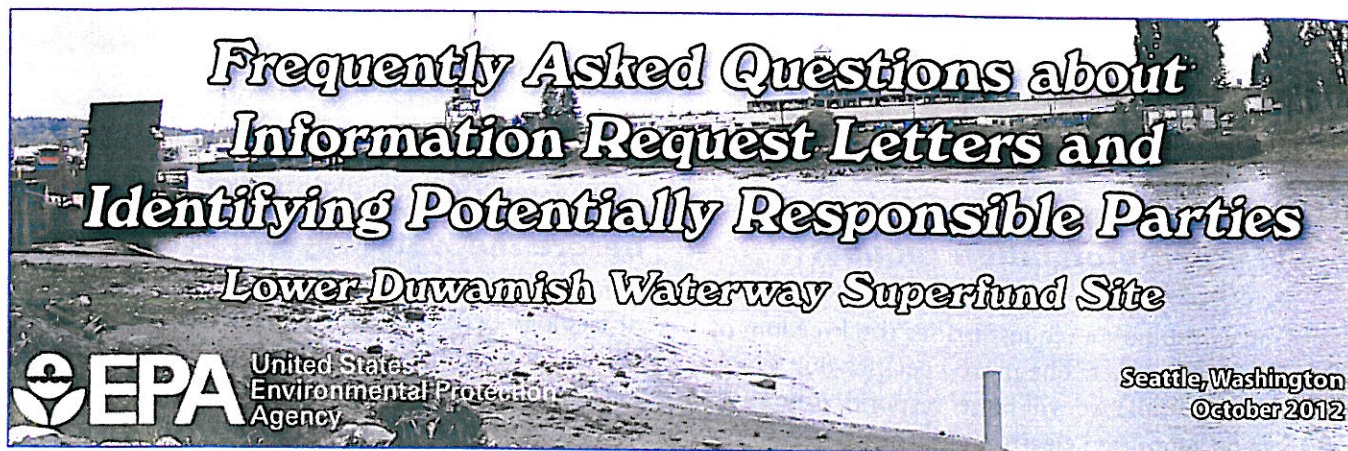
(202) 564-2855; muellerleile.caryn@epa.gov

Nathaniel Jutras

(202) 564-0301; jutras.nathaniel@epa.gov

RFA/SBREFA Website

www.epa.gov/sbrefa



Where can I find an overview of the process to identify Potentially Responsible Parties?

An overview can be found at this web site:

🔗 www.epa.gov/compliance/cleanup/superfund/find.html

Why does EPA send out information request letters?

These letters are part of EPA's information gathering process and search for potentially responsible parties (PRP) under the authority provided by Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Superfund law. Issuing information request letters provides EPA with important information about a Superfund site and is a basic component of nearly all PRP searches.

Who is a Potentially Responsible Party?

A potentially responsible party can be a:

- current owner or operator of a facility
- former owner or operator of a facility at a time when hazardous substances were disposed
- person who arranged for treatment or disposal of hazardous substances
- transporter of hazardous substances who selected the disposal site

In addition to looking at properties next to the Lower Duwamish Waterway, EPA also looks at upland properties which may have contributed to the contamination of the waterway through various means including storm drains, stormwater runoff, and groundwater contamination.

Does receiving an information request letter mean the government has decided that I am a potentially responsible party?

No. It means that EPA has reason to believe that you have information about past or current property use. The information received in response to an information request letter is one of the sources EPA uses to identify potentially responsible parties.

Does receiving a general notice letter mean the government has decided that I am a Potentially Responsible Party?

If a general notice letter accompanies an information request letter it means that EPA has reason to believe that you may be a potentially responsible party.

Can letter recipients choose not to respond to EPA?

Compliance with the request letter is mandatory, and if EPA does not receive a complete response, the recipient may be subject to possible enforcement action from EPA.

What is the timing of the PRP search for the Lower Duwamish Waterway site?

EPA will attempt to send notice letters to parties that it believes may be PRPs before the Proposed Plan is released for public comment in early 2013. Formal negotiations will begin when a remedy is selected in a Record of Decision currently scheduled to be completed in 2014.

How can I see the responses of other information request recipients?

You can submit a request under the Freedom of Information Act. The more specific your request, the better able we will be to respond. Requests can be submitted electronically at:

📧 http://1.usa.gov/FOIA_R10

Can I start cleaning up my property before the Waterway-wide cleanup?

Contact EPA or the Washington Department of Ecology before undertaking any significant voluntary cleanup action. EPA and Ecology have invested considerable time characterizing contamination in and along the Duwamish Waterway.

For More Information

Cleanups on land

Contact the Washington Department of Ecology regarding activities on upland sites. Ecology may allow some work under the Voluntary Cleanup Program (VCP). This program requires advance review and approval of all voluntary cleanup activities.

Ecology will decide on a site-by-site basis if a site is appropriate for the VCP. If work is done through the VCP, additional work may be required as a part of the larger Lower Duwamish Waterway cleanup. Ecology encourages businesses along the waterway

to prevent new sources of contamination from reaching the waterway. To learn more about the Department of Ecology's role in the cleanup, visit:

📧 tinyurl.com/EcologyLDW

Contact:

Andrew Smith, Senior Environmental Engineer
☎ 425-649-7138 📧 Andrew.smith@ecy.wa.gov

For **general information** about Ecology's programs, visit

📧 ecy.wa.gov/programs/tcp/policies/tcppoly.html

Cleanups in the waterway

Contact EPA if you are contemplating activities in the Lower Duwamish Waterway.

Contact:

Aaron Lambert, Remedial Project Manager

☎ 206-553-5122

📧 Lambert.aaron@epa.gov

To learn more about the EPA's role in the cleanup, visit:

📧 http://1.usa.gov/duwamish_clean

Other resources

Environmental Coalition of South Seattle

ECOSS is a free and confidential resource for the Puget Sound business community.

Contact them at

☎ 206-767-0432 or

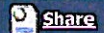
📧 info@ECOSS.org

If you need materials in an **alternative format**, please contact Renée Dagseth at 1-800-424-4372 ext. 1889

📠 **TDD users:** please call the Federal Relay Service at 800-877-8339 and give the operator Renée's phone number.



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Superfund Liability

The Superfund law (officially the [Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA"](#)) imposes liability on parties responsible for, in whole or in part, the presence of hazardous substances at a site.

Superfund Liability is:

| | |
|--------------------------|---|
| Retroactive | Parties may be held liable for acts that happened before Superfund's enactment in 1980. |
| Joint and Several | Any one potentially responsible party (PRP) may be held liable for the entire cleanup of the site (when the harm caused by multiple parties cannot be separated). |
| Strict | A PRP cannot simply say that it was not negligent or that it was operating according to industry standards. If a PRP sent some amount of the hazardous waste found at the site, that party is liable. |

Superfund liability is triggered if:

- Hazardous substances are present at a facility,
- There is a release (or a possibility of a release) of these hazardous substances,
- Response costs have been or will be incurred, and
- The defendant is a liable party.

Some potentially responsible parties (PRPs) have [unique circumstances that impact their liability](#) due to either one or all of the following:

- the small amount of waste that they contributed,
- the limited hazard posed by the waste they contributed,
- their status as municipalities, private homeowners, handlers of municipal solid waste, or owners of property above contaminated aquifers, and/or
- their inability to pay for the cleanup.

[Defenses to Superfund liability](#) are limited to cases in which the release was caused by:

- An act of God,
- Acts of war, or
- Acts/omissions of a third party with whom a PRP has no contractual relationship.

The Superfund law does provide several exemptions from and protections to Superfund liability.

Superfund Enforcement Topics

- Enforcement Authorities
- Liability
 - Triggering Liability
 - Unique Parties
 - Defenses and Exemptions
- Finding Potentially Responsible Parties
- Notice Letters
- Negotiating Settlements
- Unilateral Orders
- Compliance/Penalties
- Recovering Cleanup Costs

Acronym Tips

- PRP - Potentially Responsible Party
- EPA's [Terms of the Environment](#)

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Triggering Superfund Liability

Superfund liability is triggered if:

- Hazardous wastes are present at a facility,
- There is a release (or a possibility of a release) of these hazardous substances,
- Response costs have been or will be incurred, and
- The defendant is a liable party.

A PRP is potentially liable for:

- Government cleanup costs,
- Damages to natural resources (e.g., to a fishery),
- The costs of certain health assessments, and
- Injunctive relief (i.e., performing a cleanup) where a site may present an imminent and substantial endangerment.

There are four classes of Superfund liable parties:

1. Current owners and operators of a facility,
2. Past owners and operators of a facility at the time hazardous wastes were disposed,
3. Generators and parties that arranged for the disposal or transport of the hazardous substances, and
4. Transporters of hazardous waste that selected the site where the hazardous substances were brought.

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- PRP - Potentially Responsible Party
- EPA's Terms of the Environment

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<http://www.epa.gov/compliance/cleanup/superfund/trigger.html>
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Finding Potentially Responsible Parties

Early in the cleanup process, EPA conducts a search to find all of the potentially responsible parties (PRPs).

Under EPA's "[Enforcement First](#)" [policy \(PDF\)](#) (3pp, 121K, [about PDE](#)), EPA will usually ask PRPs to conduct the investigation and to perform the cleanup before using Superfund money.

EPA looks for evidence to determine liability by matching wastes found at the site with parties that may have contributed wastes to the site. EPA uses many approaches to do this research, including:

- Reviewing documents,
- Site investigation,
- Interviews,
- Using "information request letters" to gather information,
- Title searches, and
- Internet research, libraries, courthouses, and state offices.

In addition to identifying PRPs, EPA tries to determine early on:

- The nature of a party's involvement (e.g., owner, generator),
- A party's potential defenses (e.g., 3rd party defense),
- Any applicable exemptions or exclusions,
- The amount of waste a party contributed, and
- Whether the party can pay only very little or nothing at all toward the cleanup.

Guidance on EPA's information gathering authorities is available in the "[Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas](#)" [\(PDF\)](#) (51pp, 2,026K, [about PDF](#)) (8/25/88).

EPA's "[PRP Search Manual](#)" provides guidance on how to search for PRPs that may be liable for cleanup at a Superfund site.

The [Superfund Enforcement Directory](#) (SFED) identifies EPA staff who perform the activities for finding the PRPs. This national directory provides information on the individuals, work groups, and others who have expertise in the PRP search process and identifies EPA personnel who are involved in the site remediation enforcement process and their particular areas of expertise.

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Finding PRPs Popular Resources

- PRP Search Manual
- Superfund Enforcement Directory

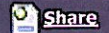
Acronym Tips

- PRP - Potentially Responsible Party
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Superfund "Notice of Liability" Letters

EPA uses two types of letters to communicate with potentially responsible parties (PRPs) regarding

- their identification as a PRP,
- their potential liability at a Superfund site,
- information regarding the site and other PRPs, and
- negotiations for the cleanup of the site.

General Notice Letters

General notice letters inform recipients that they are:

- identified as PRPs at Superfund sites,
- that they may be liable for cleanup costs at the site, and
- explains the process for negotiating the cleanup with EPA.

The letter also includes information on Superfund, the site, and may include a request for additional information.

Special Notice Letters

EPA sends out a special notice letter when it is ready to negotiate with PRPs to clean up a site.

A special notice letter gives PRPs information on why EPA thinks they are liable and EPA's plans for the cleanup of the site.

The letter also invites parties to participate in negotiations with EPA to conduct future cleanup work and pay EPA for any site-related costs already incurred.

The special notice letter triggers the start of a "negotiation moratorium," which means that EPA agrees, for a certain period of time, not to unilaterally order the PRP to conduct the cleanup. This moratorium period is intended to encourage the PRPs to negotiate a settlement agreement promptly.

EPA's general policy is to always issue special notice letters. EPA may decide not to issue a special notice letter when:

- past experience with the PRPs indicates a settlement is unlikely,
- no PRPs have been identified, or
- PRPs lack the resources to do what is needed.

Additional information on notice letters is available in EPA's ["Interim Guidance on Notice Letters, Negotiations, and Information Exchange" \(PDF\)](#) (52pp. 3,328K, [about PDF](#)).

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